

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

RAMON ARMAS BORROTO, JR.,
Plaintiff

vs.
L. MCDONALD, H.A. PATE,
C. MCKENZIE, AND DONNA KENT

CASE NO: 5:04cv165-RH/WCS

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OBJECTION

PLAINTIFF, RAMON ARMAS BORROTO, JR., pro se, hereby ~~re~~uses AN objection as to one element of this Courts July 20, 2006 ORDER, and submits the following in support thereof:

ARGUMENT

I. THE PLAINTIFF'S REQUEST FOR COMPENSATORY DAMAGES IN REGARDS TO PHYSICAL INJURY IS PROPER.

The Plaintiff objects to his claim for compensatory damages as far as physical injury. The Plaintiff insists that his claim was proper and that this Court erred in dismissing his physical injury claim.

The PLRA Title 42 U.S.C. §1997e(e), states:

"NO federal action may be brought for compensatory damages by a prisoner in a jail, prison, or correctional facility, for mental or emotional injury suffered while in custody without prior showing of physical injury."

This provision is limited to claims for emotional or mental injury. It CLEARLY means that a prisoner may not bring action for "mental" or "emotional" injury without first showing physical injury. This provision does not effect a prisoner's physical injury claims for compensatory damages. The Court therefore, erroneously used this provision as justification to dismiss the physical injury claim of the plaintiff. Congress made the obvious determination that suits brought solely for mental or emotional injury were more likely to be without merit than cases in which A prisoner sustains some kind of injury. See HARRIS v. GARDNER 216 F.3d 970, at 1005-06.

In regards to the "deminimus injury" standard which courts have adopted, said standard concerns only the PLRA title 42 U.S.C. ~~§1997e(e)~~ and

prisoner claims for mental or emotional injury. This deminimis injury standard does not apply to physical injury claims. Due to this provision not effecting physical injury claims, this Court erred in dismissing the plaintiff's physical injury claims for compensatory damages, based on a provision that only concerns mental and emotional injury claims and whose deminimis injury standard is limited to the same.

Congress clearly did not intend to ~~intend to~~ include physical injury claims in this provision OR it would have specified so. The Court may use this provision only to dismiss the plaintiff's claims for ~~compensatory~~ damages for emotional and mental injury.

Deminimis injury standards are irrelevant. If no force is necessary the Constitution may be violated by small amounts of force such as a push or shove. See Felix v. McCarthy 939 F.3d 699, 701-02. The plaintiff may and be awarded damages. See Molton v. City of Cleveland 839 F.2d 240, 249-50; and Williams v. Omodt 640 F.Supp.120, 121-23, (damages awarded for bruises, contusions, swelling, and considerable pain, where there was no justification for any use of force).

RELIEF SOUGHT

WHEREFORE, Plaintiff respectfully raises objection to this Courts July 20, 2006, order, and seeks for this Court to overturn its ruling in regards to his claim for compensatory damages for physical injury and for his claim As to the same to be reinstated.

Respectfully Submitted,

RAMON BORRERO X27467

F.S.P. M-1315

7819 N.W. 228TH St.

Ranford, FL 32026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I have read the foregoing and that a true and correct copy of the same has been delivered into the hands of an institution official to be mailed postage pre-paid to: William McCool, Clerk, U.S. District Court, 1 N. Palafox St., Room 226, Pensacola, FL 32501.

On this 31 day of August, 2006.

July

R.B.
Ramon Borreto

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